

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RICHARD A. DEMARCO

Plaintiff,

v.

COMPLAINT AND
DEMAND FOR JURY TRIAL

ROBERT J. PHILHOWER AND
HOLMDEL TOWNSHIP,

Defendants.

1. This is a civil rights action brought by Plaintiff Richard A. DeMarco for compensatory and punitive damages for Defendants' violations of Plaintiff's civil rights secured by the Civil Rights Act, 42 U.S.C. 1983 *et seq.*, and the rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, Plaintiff's civil rights secured by the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 *et seq.* and the New Jersey Constitution, and Plaintiff's rights under New Jersey common law.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is founded upon 28 U.S.C. § 1331 and 28 U.S.C. § 1343, as this action seeks to prosecute violations of Plaintiff's constitutional and civil rights pursuant to 42 U.S.C. 1983 *et seq.*

3. Plaintiff DeMarco invokes this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over any and all state constitutional and state law claims that are so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy.

VENUE

4. Venue is proper in this district under 28 U.S.C. 1391 (b) in that all claims arose in this district and at least one of the Defendants resides in this district.

JURY DEMAND

5. Plaintiff demands a trial by jury in this action on each and every one of his claims.

NOTICE OF CLAIM

6. Within ninety days after the claim arose, Plaintiff served a Tort Claim Notice upon Defendants pursuant to New Jersey law.

PARTIES

7. Plaintiff Richard A. DeMarco ("DeMarco") is a resident of Ocean County, New Jersey.

8. Defendant Robert J. Philhower ("Philhower") is a resident of Monmouth County, New Jersey.

9. Defendant Holmdel Township is a New Jersey municipality located in Monmouth County, New Jersey, which operates the Holmdel Police Department.

10. At all times relevant to this action, Defendant Philhower was acting in his capacity as a police officer of Defendant Holmdel Township.

STATEMENT OF FACTS

11. Plaintiff Demarco was contracted by M & M Towing, a Holmdel licensed towing company, to assist M& M Towing with complying with the New Jersey Motor Vehicle Commission's ("NJMVC") procedure for disposing of an unclaimed/abandoned vehicle, namely a 2003 Chevrolet Trail Blazer, bearing Vehicle Id #1GNDT13S732303837. This vehicle had been

impounded by Holmdel Police Department and was towed and stored by M&M Towing pursuant to the impoundment.

12. At the time the subject 2003 Chevrolet Trail Blazer, bearing Vehicle Id #1GNDT13S732303837 was first impounded, Holmdel Township did not maintain its own impoundment yard, and Defendant Holmdel Township routinely failed to initiate any action to dispose of impounded vehicles or other police tow vehicles stored by municipality licensed towing companies ("police tow vehicles"), but which remained unclaimed/abandoned by the vehicle owners and/or vehicle lienholders at the towing companies' yards.

13. As a result of Defendant Holmdel Township's failure to take responsibility for disposing of unclaimed/abandoned police tow vehicles stored for long periods of time at the licensed municipal towing companies' yards, the towing companies were compelled to either dispose of the vehicles illegally, or to initiate the process of legally disposing of the unclaimed/abandoned police tow vehicles through the New Jersey Motor Vehicles Commission's procedure, in the name of the Holmdel Police Department, and seek the cooperation of the Holmdel Police Department in completing the NJMVC's procedure for transferring titles to unclaimed/abandoned police tows.

14. Prior to the events at issue in this action, Plaintiff DeMarco had previously been contracted by Holmdel Township licensed towing companies, and had written to the Holmdel Police Department to request a copy of the Holmdel Police Department letterhead for his use in assisting Holmdel Township licensed municipal towing companies dispose of unclaimed/abandoned Holmdel Township police tow vehicles.

15. In requesting the Holmdel Police Department letterhead, Plaintiff DeMarco specifically described the purposes for which he intended to use the Holmdel Police Department

letterhead on behalf of his tow company customers that were Holmdel Township licensed towing companies.

16. In response to Plaintiff DeMarco's request to use the Holmdel Police Department letterhead on behalf of his customers, Plaintiff DeMarco was provided with a copy of the Holmdel Police Department letterhead by the Holmdel Police Department, thereby implicitly agreeing to his request to use the Holmdel Police Department letterhead for the stated purpose.

17. M & M Towing obtained the written authorization of Defendant Philhower to move forward with the auction of the subject 2003 Chevrolet Trail Blazer, bearing Vehicle Id #1GNDDT13S732303837, by Defendant Philhower signing the NJMVC's OS-89 form, which requests permission from the NJMVC to move forward with the sale of the unclaimed/abandoned vehicle at auction.

18. On behalf of his customer, M & M Towing, Plaintiff DeMarco advertised the auction of the subject 2003 Chevrolet Trail Blazer, bearing Vehicle Id #1GNDDT13S732303837 for November 7, 2013, in the newspaper as required by the NJMVC's procedure.

19. On behalf of his customer M & M Towing, Plaintiff DeMarco, as the assigned auctioneer, was present at an auction of the subject vehicle on November 7, 2013 at M & M Towing's facility.

20. Richard DeMarco prepared the proposed form of the Bill of Sale for the sale of the subject vehicle at the November 7, 2013 auction, which necessarily required, pursuant to the NJMVC's procedure, to have the letterhead of the Holmdel Police Department affixed to the top of the Bill of Sale.

21. To be effective as a Bill of Sale for the purposes of moving forward with the NJMVC's procedure to dispose of the subject unclaimed/abandoned vehicle, the Bill of Sale required an authorized signature of the Holmdel Police Department to be on the Bill of Sale.

22. Without an authorized signature from the Holmdel Police Department on the proposed form of the Bill of Sale, the document would not be accepted by the NJMVC, and could not be used to transfer title to the subject vehicle through the NJMVC's procedure to transfer title to an abandoned/unclaimed police tow.

23. Defendants were completely free to either use the proposed form of Bill of Sale drafted by Plaintiff DeMarco, or reject the proposed form and create their own form of Bill of Sale.

24. When Defendant Philhower was presented with the Bill of Sale for his signature, he became angry with Plaintiff DeMarco.

25. Defendant Philhower erroneously advised the NJMVC that Defendant Philhower had not signed the OS-89 form.

26. Defendant Philhower erroneously advised the NJMVC that his name had been forged on the OS-89 form.

27. Defendant Philhower erroneously advised the NJMVC that Plaintiff DeMarco had conducted the auction of the subject vehicle without the Holmdel Police Department's authorization.

28. When presented with the OS-89 form by an agent of the NJMVC, Defendant Philhower acknowledged that his true signature was on the OS-89 form.

29. Defendant Philhower had signed the OS-89 form, but had forgotten that he had done so.

30. On May 16, 2014, Defendant Philhower wrote to the NJMVC requesting title to the subject vehicle be issued to Defendant Holmdel Township.

31. In his letter to the NJMVC seeking title to the subject vehicle, Defendant Philhower implicitly represented to the NJMVC that the auction of the subject vehicle that had occurred on November 7, 2013 at 10:00 a.m. at M&M Towing's facility, was the authorized act of the Holmdel Police Department.

32. In his May 16, 2014 letter to the NJMVC seeking title to the subject vehicle, Defendant Philhower implicitly represented to the NJMVC that the auction on November 7, 2013 at 10:00 a.m. of the subject vehicle had been advertised in the Coast Star newspaper by the Holmdel Police Department, and/or its authorized agent, and a copy of the advertisement was attached to Defendant Philhower's May 16, 2014 letter to the NJMVC.

33. The subject advertisement specifically represented that the scheduled auction of the subject vehicle on November 7, 2013 was being held by the Holmdel Police Department.

34. In his letter to the NJMVC seeking title to the subject vehicle, Defendant Philhower represented to the NJMVC that no bids were made for the subject vehicle at the auction on November 7, 2013 at 10:00 a.m.

35. The advertisement placed in The Coast Star newspaper for the November 7, 2013 auction of the subject vehicle was placed in the paper by Plaintiff DeMarco and was paid for by Plaintiff DeMarco.

36. At the time Defendant Philhower wrote his May 16, 2014 letter to the NJMVC, Defendant Philhower knew that the advertisement for the auction of the subject vehicle on November 7, 2014 had been placed in the newspaper by Plaintiff DeMarco, and knew, or should have known that it was done at Plaintiff DeMarco's expense.

37. By representing that the advertisement for the scheduled auction of the subject vehicle was placed in the newspaper as the authorized act of the Holmdel Police Department, Defendants were representing that Plaintiff DeMarco was authorized and/or ratified by the Holmdel Police Department to place the subject advertisement in the newspaper on behalf of the Holmdel Police Department.

38. The November 7, 2013 auction at M&M Towing's facility was conducted by Plaintiff DeMarco as the assigned auctioneer.

39. At the time Defendant Philhower wrote his May 16, 2014 letter to the NJMVC, Defendants knew that Plaintiff DeMarco had conducted the November 7, 2013 auction for the subject vehicle as the assigned auctioneer.

40. By representing that the November 7, 2013 auction was held and conducted as the authorized act of the Holmdel Police Department, Defendants were implicitly representing that Plaintiff DeMarco was authorized and/or ratified by the Holmdel Police Department to notice and hold the auction on behalf of the Holmdel Police Department.

41. By representing that the November 7, 2013 auction was held and conducted as the authorized act of the Holmdel Police Department, Defendants were implicitly representing that Plaintiff DeMarco was authorized and/or ratified by the Holmdel Police Department to perform all acts reasonably connected to the conducting and completion of the auction.

42. By representing that the November 7, 2013 auction was held and conducted as the authorized act of the Holmdel Police Department, Defendants were implicitly representing that Plaintiff DeMarco was authorized and/or ratified by the Holmdel Police Department to prepare the form of Bill of Sale for the auction, which had to be signed by an authorized representative of the Holmdel Police Department to be effective and accepted by the NJMVC.

43. On May 29, 2014, thirteen days after he wrote his letter to the NJMVC representing that the subject vehicle was auctioned by the Holmdel Police Department, Defendant Philhower signed and issued a Complaint – Summons, bearing complaint number 1318 S 2014 000162, against Plaintiff DeMarco in the New Jersey Superior Court, charging Plaintiff DeMarco with violating N.J.S.A. 2C:21-1A(2) and N.J.S.A. 2C:21-1A(3), and alleging that Plaintiff DeMarco had used the Holmdel Police Department letterhead on the proposed form of the Bill of Sale for the November 7, 2013 auction without the authority of the Holmdel Police Department, and that this alleged conduct constituted a crime.

44. Defendant Philhower signed the Complaint against Plaintiff DeMarco indicating he was issuing the Complaint in his capacity as a Sergeant in the Holmdel Police Department.

45. The Complaint was forwarded to the Monmouth County Prosecutor to determine whether the Monmouth County Prosecutor would pursue an indictment and prosecution of the charges filed by Defendant Philhower against Plaintiff DeMarco.

46. The Monmouth County Prosecutor, upon reviewing the filed charges, downgraded the charges, and remanded the matter to the Holmdel Municipal Court.

47. After the charges were filed against Plaintiff DeMarco and the criminal proceeding against Plaintiff DeMarco had begun, Plaintiff's counsel repeatedly made discovery requests for documents that would have encompassed Defendant Philhower's May 16, 2014 letter to the NJMVC and any other documents that indicated that the Holmdel Police Department had used, ratified or otherwise relied upon any of the work or actions of Plaintiff DeMarco including any documents prepared by Plaintiff DeMarco in seeking to dispose of the subject vehicle.

48. Defendants Philhower and Holmdel Township repeatedly failed to produce Defendant Philhower's May 16, 2014 letter to the NJMVC or any other documents that showed

that Defendants Philhower and Holmdel Township had relied upon the notices sent by Plaintiff DeMarco, the advertisements placed in the newspapers by Plaintiff DeMarco, or the auction held by Plaintiff DeMarco, in applying for the transfer of title to the subject unclaimed/abandoned vehicle.

49. The May 16, 2014 letter to the NJMVC, authored by Defendant Philhower, implicitly admits facts that were never disclosed to Plaintiff and/or his counsel; namely, that Defendant Philhower represented to the NJMVC that the November 7, 2013 auction conducted by Plaintiff DeMarco was a valid auction, authorized by the Holmdel Police Department, and this auction and Plaintiff DeMarco's notices and advertisements for this auction were used by Defendants Philhower and Holmdel Township to transfer title to the vehicle.

50. Upon information and belief, Defendant Philhower did not advise the Monmouth County Prosecutor's Office that he had sought to obtain title to the subject unclaimed/abandoned vehicles from the NJMVC by relying upon the notices served by Plaintiff DeMarco, the advertisements placed by Plaintiff DeMarco, and the auction scheduled and presided over by Plaintiff DeMarco before filing the criminal charges against Plaintiff DeMarco.

51. When Plaintiff DeMarco appeared at the Holmdel Municipal Court for his schedule court appearance for the charged filed by Defendant Philhower, Plaintiff DeMarco was instructed by a Holmdel Police Department officer that he was required to report to the Holmdel Police Department to be photographed and fingerprinted, and he was directed to an office within the Holmdel Police Department where he was required to wait to be fingerprinted and photographed before he could enter the municipal court.

52. Plaintiff DeMarco was fingerprinted and photographed even though he only had downgraded municipal charges pending by that date.

53. Based upon the instruction of the Holmdel Police Officer that the photographing and fingerprinting were mandatory and had to be accomplished before Plaintiff DeMarco could go to the Courtroom, Plaintiff DeMarco was detained against his will and *de facto* arrested for the purpose of fingerprinting and photographing.

54. All charges against Plaintiff DeMarco were dismissed with prejudice in Plaintiff DeMarco's favor on February 11, 2015.

55. There was no probable cause to file the criminal charges against Plaintiff DeMarco because Defendants knew that they had already implicitly represented to the NJMVC that Plaintiff DeMarco was an authorized agent of the Holmdel Police Department, and Defendants also knew that Plaintiff DeMarco's mere affixing of the Holmdel Police Department letterhead to a proposed form of Bill of Sale, which was then presented to the Holmdel Police Department for its approval and authorizing signature, did not constitute a crime.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS AND VIOLATION OF 24 U.S.C. § 1983.

56. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

57. Defendants initiated a criminal proceeding against Plaintiff DeMarco.

58. Defendants filed the criminal charges against Defendant knowingly there was no probable cause to support the filed criminal charges.

59. Defendants intentionally withheld exculpatory evidence from Plaintiff and his counsel in furtherance of their efforts to prosecute Plaintiff DeMarco for criminal charges without probable cause.

60. Defendants filing of criminal charges against Plaintiff were motivated by malice because Defendant Philhower wanted to bully, harass and cause hardship for Plaintiff DeMarco because Defendant Philhower disliked Plaintiff DeMarco.

61. The charges against Plaintiff DeMarco were dismissed in his favor.

62. Defendants violated Plaintiff's Fourth, Fifth and Fourteen Amendment rights by subjecting Plaintiff DeMarco to a prosecution for criminal charges without probable cause.

63. Defendants acted under color of law in seeking to prosecute Plaintiff DeMarco without probable cause, in violation of his Fourth, Fifth and Fourteenth Amendment Rights, and in violation of 42 U.S.C. §1983.

64. Defendants acted maliciously or acted in reckless disregard of Plaintiff DeMarco's rights in seeking to prosecute Plaintiff DeMarco without probable cause, thereby entitling Plaintiff to the recovery of punitive damages from Defendants.

65. As a result of the Defendants actions, Plaintiff suffered damages and injury.

SECOND CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS AND VIOLATION OF 24 U.S.C. § 1983.

66. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

67. Plaintiff, through his counsel, made express demands for the production of any correspondence or other documents exchanged between Defendants and the NJMVC regarding the subject unclaimed/abandoned vehicle.

68. Plaintiff, through his counsel, made express demands for the production of any exculpatory evidence regarding the criminal charges against Plaintiff DeMarco filed by Defendants.

69. Defendants intentionally withheld exculpatory evidence from Plaintiff and Plaintiff's counsel in seeking to prosecute Plaintiff DeMarco for the subject criminal charges.

70. Defendants intentionally withheld exculpatory evidence with the malicious motive to thwart, hamper and otherwise handicap Plaintiff DeMarco's defense to the criminal charges filed by Defendants.

71. Defendants violated Plaintiff's Fourth, Fifth and Fourteen Amendment rights by seeking to deprive Plaintiff of exculpatory evidence in his defense to the criminal charges filed by Defendants.

72. Defendants acted under color of law in seeking to thwart, hamper or otherwise interfere Plaintiff DeMarco's ability to defend against the subject charges in violation of his Fourth, Fifth and Fourteenth Amendment Rights, and in violation of 42 U.S.C. §1983.

73. Defendants acted maliciously or acted in reckless disregard of Plaintiff DeMarco's rights in seeking to deprive Plaintiff of exculpatory evidence in his defense to the criminal charges filed by Defendants, thereby entitling Plaintiff to the recovery of punitive damages from Defendants.

74. As a result of the Defendants actions, Plaintiff suffered damages and injury.

THIRD CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS AND VIOLATION OF 24 U.S.C. § 1983.

75. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

76. When Plaintiff arrived at the Holmdel Municipal Court for his scheduled court appearance, he was instructed by a Holmdel police officer that he had to first report directly to an

office in the Holmdel Police Department to submit to fingerprinting and photographing before entering the Court.

77. Given that he was instructed that he had to submit to fingerprinting and photographing before he could attend his scheduled court appearance for that day, Plaintiff DeMarco followed the Holmdel police officer's instructions to report to an office in the Holmdel Police Department, where he was fingerprinted and photographed.

78. At the time Plaintiff DeMarco was required to submit to photographing and fingerprinting, the charges against him had been downgraded to the Holmdel Municipal Court, and Defendants had no legal right to require Plaintiff DeMarco to submit to photographing and fingerprinting.

79. Defendants wrongfully arrested and/or detained Plaintiff DeMarco and subjected him to fingerprinting and photographing without legal right.

80. Defendants violated Plaintiff's Fourth, Fifth and Fourteen Amendment rights under the U.S. Constitution by arresting and/or detaining Plaintiff DeMarco for the purpose of photographing and fingerprinting him without a legal right to do so.

81. Defendants acted under color of law in wrongfully arresting and/or detaining Plaintiff DeMarco and compelling him to submit to photographing and fingerprinting in violation of his Fourth and Fourteenth Amendment Rights, and in violation of 42 U.S.C. §1983.

82. Defendants acted maliciously or acted in reckless disregard of Plaintiff DeMarco's rights by arresting and/or detaining Plaintiff DeMarco for the purpose of photographing and fingerprinting him without any legal right, thereby entitling Plaintiff to the recovery of punitive damages from Defendants.

83. As a result of the Defendants actions, Plaintiff suffered damages and injury.

FOURTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE NEW JERSEY CONSTITUTION, THE FOURTH, FIFTH AND FOURTEEN AMENDMENTS OF THE U.S. CONSTITUTION AND N.J.S.A. 10:6-2 et seq.

84. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

85. Defendants initiated a criminal proceeding against Plaintiff DeMarco.

86. Defendants filed the criminal charges against Defendant knowingly there was no probable cause to support the filed criminal charges.

87. Defendants intentionally withheld exculpatory evidence from Plaintiff and his counsel in furtherance of their efforts to prosecute Plaintiff DeMarco for criminal charges without probable cause.

88. Defendants filing of criminal charges against Plaintiff were motivated by malice because Defendant Philhower wanted to bully, harass and cause hardship for Plaintiff DeMarco because Defendant Philhower disliked Plaintiff DeMarco.

89. The charges against Plaintiff were dismissed in Plaintiff DeMarco's favor.

90. Defendants violated Plaintiff's rights under the New Jersey Constitution and the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution, by subjecting Plaintiff DeMarco to a prosecution for criminal charges without probable cause.

91. Defendants acted under color of law in seeking to prosecute Plaintiff for criminal charges without probable cause, in violation of the New Jersey Constitution, the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution, and N.J.S.A. 10:6-2 et seq.

92. Defendants acted maliciously or acted in reckless disregard of Plaintiff's rights in seeking to prosecute Plaintiff DeMarco without probable cause, thereby entitling Plaintiff to the recovery of punitive damages from Defendants.

93. As a result of the Defendants actions, Plaintiff suffered damages and injury.

FIFTH CAUSE OF ACTION

**AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S RIGHTS UNDER
THE NEW JERSEY CONSTITUTION, THE FOURTH, FIFTH AND FOURTEEN
AMENDMENTS OF THE U.S. CONSTITUTION AND N.J.S.A. 10:6-2 et seq.**

94. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

95. Plaintiff, through his counsel, made express demands for the production of any correspondence or other documents exchanged between Defendants and the NJMVC regarding the subject unclaimed/abandoned vehicle.

96. Plaintiff, through his counsel, made express demands for the production of any exculpatory evidence regarding the charges file against Plaintiff DeMarco by Defendants.

97. Defendants intentionally withheld exculpatory evidence from Plaintiff and Plaintiff's counsel in seeking to prosecute Plaintiff DeMarco for the subject criminal charges filed by Defendants.

98. Defendants intentionally withheld exculpatory evidence with the malicious motive to hamper, handicap and otherwise interfere with Plaintiff DeMarco's defense to the criminal charges filed by Defendants, thereby entitling Plaintiff the recovery of punitive damages from Defendants.

99. Defendants violated Plaintiff's rights under the New Jersey Constitution and the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution by seeking to deprive Plaintiff of exculpatory evidence in defense the criminal charges filed by Defendants.

100. Defendants acted under color of law in seeking to thwart, hamper or otherwise interfere with Plaintiff's ability to defend against the subject charges filed by Defendants in violation of Plaintiff's rights under the New Jersey Constitution, the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution, and in violation of N.J.S.A. 10:6-2 et seq.

101. As a result of the Defendants actions, Plaintiff suffered damages and injury.

SIXTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE NEW JERSEY CONSTITUTION, FOURTH, FIFTH AND FOURTEEN AMENDMENTS OF THE U.S. CONSTITUTION AND N.J.S.A. 10:6-2 et. seq.

102. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

103. When Plaintiff DeMarco arrived at the Holmdel Municipal Court, he was instructed by a Holmdel police officer at the front door of the municipal building that he was required to report directly to an office in the Holmdel Police Department to submit to fingerprinting and photographing before entering the courtroom.

104. Given that he was instructed that he had to submit to fingerprinting and photographing before he could attend his scheduled court appearance for that day, Plaintiff DeMarco complied with the Holmdel police officer's instructions to report to an office in the Holmdel Police Department, where he was fingerprinted and photographed.

105. At the time Plaintiff DeMarco was required to submit to photographing and fingerprinting by Defendants, the criminal charges against him had been downgraded to the Holmdel Municipal Court, and Defendants had no right to compel Plaintiff DeMarco to submit to photographing and fingerprinting.

106. Defendants wrongfully arrested and/or detained Plaintiff DeMarco and subjected him to fingerprinting and photographing without a legal right to do so.

107. Defendants violated Plaintiff DeMarco's rights under the New Jersey Constitution and the Fourth, Fifth and Fourteenth Amendment of the U.S. Constitution by wrongfully arresting and/or detaining him for the purpose of photographing and fingerprinting him, and compelling Plaintiff DeMarco to submit to photographing and fingerprinting with a legal right to do so.

108. Defendants acted under color of law in wrongfully arresting and/or detaining Plaintiff, and compelling Plaintiff DeMarco to submit to photographing and fingerprinting in violation of his rights under the New Jersey Constitution, the Fourth, Fifth and Fourteenth Amendment of the U.S. Constitution, and in violation of N.J.S.A. 10:6-2, *et seq.*

109. Defendants acted maliciously or acted in reckless disregard of Plaintiff's rights in seeking to wrongfully arresting and/or detaining Plaintiff, and compelling Plaintiff DeMarco to submit to photographing and fingerprinting in violation of his rights under the New Jersey Constitution, the Fourth, Fifth and Fourteenth Amendment of the U.S. Constitution, and in violation of N.J.S.A. 10:6-2, *et seq.*, thereby entitling Plaintiff to the recovery of punitive damages from Defendants.

110. As a result of the Defendants actions, Plaintiff suffered damages and injury.

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR COMMON LAW MALICIOUS PROSECUTION

111. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

112. Defendants initiated a criminal proceeding against Plaintiff DeMarco.

113. Defendants filed the criminal charges against Defendant knowingly there was no probable cause to support the filed criminal charges.

114. Defendants intentionally withheld exculpatory evidence from Plaintiff and his counsel in furtherance of Defendants' efforts to prosecute Plaintiff DeMarco for criminal charges without probable cause.

115. Defendants filing of criminal charges against Plaintiff DeMarco were motivated by malice because Defendant Philhower wanted to bully, harass and cause hardship for Plaintiff DeMarco because Defendant Philhower disliked Plaintiff DeMarco.

116. The charges against Plaintiff Demarco were dismissed in Plaintiff's favor.

117. Plaintiff charges that Defendants' actions in filing the criminal charges against Plaintiff without probable cause, were willful and wonton, which should entitle Plaintiff to the award of punitive damages from Defendants.

118. As a result of the malicious prosecution by Defendants, Plaintiff suffered injury and damages.

EIGHTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR FALSE ARREST/WRONGFUL DETENTION

119. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

120. Plaintiff was arrested and/or detained and required to submit to fingerprinting and photographing without any legal justification.

121. Defendant knew, or should have known, they had no legal right to arrest and/or detain Plaintiff DeMarco for fingerprinting and photographing when he was facing downgraded

charges in municipal court, and when there was no probable cause to maintain any criminal charges against Plaintiff.

122. As a result of being wrongfully arrested and/or detained for the purpose of photographing and fingerprinting, Plaintiff DeMarco has suffered injury and damages.

123. Defendants actions were intentional and wonton, which should entitled Plaintiff to the recovery of punitive damages from Defendants.

EIGHTH CAUSE OF ACTION

AGAINST DEFENDANT HOLMDEL TOWNSHIP FOR RESPONDEAT SUPERIOR

124. Plaintiff repeats and reasserts all of the allegations stated in the preceding paragraphs as if stated verbatim and at length.

125. At all times relevant to this action, Defendant Philhower was acting within his capacity as a police officer and employee of Defendant Holmdel Township.

126. Plaintiff DeMarco charges that Defendant Holmdel Township is liable for the wrongful acts and conduct of Defendant Philhower described herein while acting in his capacity as a police officer for Defendant Holmdel Township.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Richard DeMarco, prays that this Court:

1. Enter a judgment, jointly and severally, against Defendant Robert J. Philhower and Defendant Holmdel Township for compensatory damages; and,
2. Enter a judgment, jointly and severally, against Defendant Robert J. Philhower and Defendant Holmdel Township for punitive damages; and,
3. Awarding Plaintiff reasonable attorney's fees and litigation expenses from Defendants pursuant to 42 U.S.C. § 1988 and N.J.S.A. 10:6-2(f);

4. Granting such other and further relief which the Court deems proper in the interests of justice.

Dated: August 8, 2016

Respectfully submitted,

/s/ Darryl T. Garvin
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